

COMMONWEALTH EDISON COMPANY

ILLINOIS COMMERCE COMMISSION
DOCKET NO. 00-0361

DIRECT TESTIMONY

SUBMITTED BY

ROBERT E. BERDELLE
VICE PRESIDENT AND COMPTROLLER

OFFICIAL FILE

I.C.C. DOCKET NO. 00-0361
Edison Exhibit No. 2
Witness Berdelle
Date 8-8-00 Reporter KP

1 Q.1. Mr. Berdelle, please state your name and business
2 address.

3
4 A.1. My name is Robert E. Berdelle. My business address is
5 Commonwealth Edison Company, One First National Plaza,
6 Suite 3700, Chicago, Illinois, 60603.

7
8
9 Q.2. Please describe your educational and professional
10 background.

11
12 A.2. I hold a Bachelor of Business Administration in
13 Finance from the University of Notre Dame. I am a
14 Certified Public Accountant in the State of Illinois.
15 On December 16, 1998, I was appointed to my present
16 position as Vice President and Comptroller of ComEd.
17 Prior to that time, I served as Comptroller of the
18 company. I have been with ComEd since 1978, and have
19 held a variety of positions, including Manager of
20 Financial Reporting, Director of Strategic Analysis,
21 Director of Revenue Requirements, Regulatory Project
22 Manager, District Manager for an operating unit of
23 ComEd and Regulatory Affairs Director. I am a member
24 of the National Association of Business Economists and
25 the Financial Executives Institute.

26
27
28 Q.3. What is the purpose of your testimony?

29
30 A.3. The purpose of my testimony is to discuss ComEd's
31 proposal for settling its remaining decommissioning
32 liabilities in light of its present plan to transfer
33 ownership of its nuclear generating stations (the
34 "Nuclear Stations" or the "Stations"). As the
35 Commission is aware, ComEd has given notice that
36 Unicom Corporation, its parent, intends to merge with
37 PECO Energy Company ("PECO") to form a new company
38 called Exelon, Inc. ("Exelon"). ComEd has also
39 notified the Commission that in connection with the
40 merger, it intends to transfer ownership of the
41 Nuclear Stations to Exelon Genco, Inc. ("Exelon Genco"
42 or the "Genco"), which is to be a wholly owned
43 subsidiary of Exelon.
44

1 The costs to decommission the Nuclear Stations are
2 substantially in excess of the amounts that are now in
3 the decommissioning trust funds. Because ComEd is
4 entitled to recover all reasonable costs and expenses
5 of decommissioning, ComEd's retail customers are
6 responsible for the payment of these costs. ComEd has
7 filed this petition to seek Commission approval of a
8 proposal that will reduce decommissioning collections
9 from ComEd's customers by about 55% after the transfer
10 of the Stations, resulting in savings of \$1 billion.
11

12
13 Q.4. Please describe ComEd's proposal for settling its
14 decommissioning liabilities in connection with the
15 transfer of the Nuclear Stations.
16

17 A.4. ComEd proposes the following with respect to its
18 remaining decommissioning collections:
19

- 20 • ComEd proposes to limit its decommissioning
21 collections to \$120.9333 million per year. This
22 is the same amount that was supported by the
23 record in ComEd's 1999 decommissioning case as
24 the annual amount needed by ComEd for
25 decommissioning. It is also supported by the
26 testimony of Thomas S. LaGuardia, who has
27 prepared similar estimates for 85% of the nuclear
28 stations in the United States, and who has also
29 filed testimony in this case.
30
- 31 • ComEd also proposes to collect this annual amount
32 for only six years after the Stations are
33 transferred. As discussed below, this corresponds
34 to the term of the Power Purchase Agreement that
35 ComEd will enter into with the Genco whereby it
36 will purchase power generated at the Stations.
37
- 38 • And finally, at the end of the six years, subject
39 to a final reconciliation, ComEd commits that it
40 will not seek any additional decommissioning
41 collections from its customers. Because the
42 arrangements for the transfer of the Stations
43 will not permit the Genco to collect
44 decommissioning amounts at that time, ComEd's

1 proposal advanced herein will provide for an end
2 to decommissioning collections from ComEd
3 customers.
4

5 The specific aspects of ComEd's proposal are more
6 fully discussed below.
7
8

9 Q.5. Does ComEd's proposal offer benefits for ratepayers?

10
11 A.5. Yes. ComEd's proposal for the resolution of its
12 decommissioning liabilities discussed herein offers
13 substantial benefits for ComEd's ratepayers. It will
14 reduce decommissioning collections from ComEd's
15 customers by about 55%, resulting in savings of \$1.0
16 billion. In particular:
17

- 18 • The leading experts in determining the costs of
19 decommissioning nuclear stations, TLG Services,
20 Inc, have concluded that ComEd's costs of
21 decommissioning are \$5.6 billion in 2000 dollars.
22 Assets in the decommissioning trusts totaled
23 approximately \$2.5 billion as of December 31,
24 1999, leaving a substantial shortfall in the
25 funds needed for decommissioning. Under the
26 Public Utilities Act, ComEd's customers are
27 obligated to pay the full amount of this
28 shortfall.
29
- 30 • ComEd's proposal will cap retail customers'
31 exposure for decommissioning costs which have
32 been subject to rapid escalation in recent years;
33
- 34 • ComEd's proposal will end ComEd's decommissioning
35 collections in 2006, subject to reconciliation.
36 These collections are currently planned to extend
37 until 2027; and
38
- 39 • The combination of these factors produces a
40 savings for customers of \$1.0 billion.
41
42
43
44

The Transfer of the Nuclear Stations

Q.6. Please describe ComEd's plan for transferring the Stations.

A.6. On May 19, 2000, ComEd filed with the Commission its Notice of Transfer of Assets and Wholesale Marketing Business (the "Notice of Transfer" or the "Notice"), in which it notified the Commission of its plan to transfer the Nuclear Stations in accordance with section 16-111(g) of the of the Act, 220 ILCS 5/16-111(g). In the Notice, ComEd informed the Commission that the Stations would be transferred to Exelon Genco, a wholly owned subsidiary of Exelon. As mentioned above, Exelon will be formed as a result of the proposed merger of ComEd's parent, Unicom, and PECO. After the transfer of the Stations, Exelon Genco will operate the Stations and ComEd will no longer be involved in Station operations.

Q.7. How will ComEd obtain electricity for its customers after the Stations are transferred?

A.7. For the six years following the transfer of the Stations, ComEd will receive electricity from the Genco pursuant to a Power Purchase Agreement (the "PPA") that it will enter into as part of the agreement to transfer the Stations. A copy of the PPA is attached as Exhibit A to Mr. McDonald's testimony. Pursuant to the PPA, the Genco will supply ComEd with all of the electricity needed for its customers through 2004. The Genco will then provide ComEd with electricity in 2005 and 2006 up to the available capacity of the Nuclear Stations. Mr. McDonald addresses the PPA in more detail in his testimony.

Q.8. Is the decommissioning of the Stations addressed in connection with the arrangements for the transfer of the Stations?

A.8. Yes. The arrangements for the transfer of the Stations provide that the Genco will be responsible for decommissioning after the transfer. ComEd's

1 existing obligations for decommissioning will be
2 assumed by the Genco in connection with the transfer.
3 To provide the Genco with a portion of the funds
4 needed for decommissioning, the transfer arrangements
5 also provide that the assets in ComEd's
6 decommissioning trusts will be transferred to the
7 Genco along with the Stations. The transfer of
8 decommissioning obligations and the assets of the
9 decommissioning trusts in connection with the transfer
10 of the Stations is described in the Contribution
11 Agreement that is attached to my testimony as Exhibit
12 1.
13

14
15 Q.9. Will ComEd's decommissioning collections continue
16 after the transfer of the Stations?
17

18 A.9. Yes. ComEd's customers are obligated to pay all
19 reasonable costs and expenses of decommissioning. The
20 assets in the decommissioning trusts are insufficient
21 to pay these costs. Therefore, the collection of
22 decommissioning charges from customers should continue
23 as long as necessary to fund all reasonable costs and
24 expenses of decommissioning. The Contribution
25 Agreement, provides that ComEd will continue to
26 collect such additional decommissioning amounts, which
27 the Commission will approve under the provisions of
28 the Public Utilities Act and Rider 31. ComEd is
29 obligated by contract to turn over any such amounts
30 collected to the Genco, which will then use these
31 amounts for decommissioning.
32

33
34 Q.10. Does ComEd seek the Commission's approval to limit the
35 collection of additional decommissioning costs after
36 the transfer of the Stations to the Genco?
37

38 A.10. Yes. ComEd has initiated this petition seeking
39 approval of its proposal to limit decommissioning
40 collections after the transfer of the Nuclear
41 Stations.
42
43
44

1 ComEd's Proposal for
2 Remaining Decommissioning Collections
3

4 Q.11. Please discuss ComEd's proposal to limit
5 decommissioning collections after the transfer of the
6 Stations.
7

8 A.11. As stated above, ComEd proposes to collect specified
9 decommissioning costs after the Stations are
10 transferred. ComEd proposes to collect \$120.9333
11 million per year from its customers for the six years
12 following the transfer. At the end of the six year
13 period, subject to a final reconciliation, ComEd will
14 commit that it will not seek to collect any additional
15 decommissioning costs from its customers.
16

17 Q.12. What is the significance of the \$120.9333 million in
18 decommissioning amounts that ComEd seeks to collect
19 each year?
20

21 A.12. This is the same amount that ComEd presently seeks to
22 collect in its 1999 decommissioning case (Docket 99-
23 0115) that is pending at the Commission. In that
24 case, ComEd submitted decommissioning cost estimates
25 that were prepared by Thomas S. LaGuardia of TLG
26 Services, Inc. ("TLG"). Mr. LaGuardia is the leading
27 industry expert with respect to estimating nuclear
28 station decommissioning costs. Mr. LaGuardia and TLG
29 have prepared decommissioning cost estimates for more
30 than 85% of the nuclear stations in the United States.
31

32 The TLG cost estimates that were admitted as evidence
33 in ComEd's 1999 decommissioning case supported ComEd's
34 request for \$120.9333 million in decommissioning
35 collections per year - the same annual amount that
36 ComEd seeks here. In addition, Mr. LaGuardia has also
37 submitted testimony in this docket and has testified
38 that the decommissioning cost estimates submitted in
39 the 1999 case continue to be reasonable. Accordingly,
40 these same cost estimates support ComEd's continued
41 collection of \$120.9333 million as the annual amount
42 needed to decommission ComEd's nuclear stations.
43
44

1 The Benefits of ComEd's Proposal
2 for the Transfer of the Nuclear Stations
3

4 Q.13. Does ComEd's proposal for the settling of its
5 decommissioning liability offer benefits to ComEd's
6 customers?
7

8 A.13. Yes. ComEd's proposal for settling its
9 decommissioning liabilities advanced herein offers
10 substantial benefits to ComEd's customers. ComEd's
11 proposal will cap ComEd's decommissioning collections
12 at the current proposed levels. As discussed above,
13 the amount that ComEd seeks to collect here for the
14 six years following the transfer of the Stations is
15 the same amount that ComEd seeks to collect in its
16 1999 Rider 31 decommissioning case. By capping the
17 level of decommissioning collections, ComEd's proposal
18 will protect ratepayers from increases in
19 decommissioning costs. This protection is significant
20 because these costs have tended to increase due to
21 changing NRC decommissioning regulations, increases in
22 low level waste burial costs and uncertainty over the
23 cost and manner of long term nuclear waste storage.
24

25 In addition, ComEd's proposal will end decommissioning
26 collections from ComEd's customers six years after the
27 Stations are transferred, subject to the final
28 reconciliation. This will substantially reduce the
29 period in which decommissioning amounts would
30 otherwise be collected. Absent approval of ComEd's
31 proposal, decommissioning collections will continue
32 through 2027. As a result, ComEd's proposal reduces
33 the period in which ComEd will collect decommissioning
34 costs by more than twenty years.
35

36
37 Q.14. Will ComEd's proposal result in savings for ComEd's
38 customers?
39

40 A.14. Yes. ComEd estimates that its proposal will reduce
41 decommissioning collections by about 55%, resulting in
42 savings of approximately \$1.0 billion for ComEd's
43 customers. These savings will result from ComEd's
44 proposal to cap its remaining decommissioning

1 collections at current proposed levels, and its
2 proposal to reduce the duration of its remaining
3 decommissioning collections to only six years plus the
4 reconciliation period after the transfer of the
5 Stations.

6
7
8 Q.15. Will ComEd's proposal to transfer the Stations to the
9 Genco benefit ComEd's customers?

10
11 A.15. Yes. ComEd's proposal will benefit customers by
12 further separating ComEd's wires business from the
13 generation and wholesale marketing functions thereby
14 furthering development of a competitive generation
15 market in Illinois. The transfer of the Stations will
16 also benefit customers by protecting ComEd from the
17 financial and operating risks associated with station
18 operation.

19
20
21 **Decommissioning After**
22 **the Transfer of the Stations**

23
24 Q.16. After the Stations are transferred, who will be
25 responsible for decommissioning?

26
27 A.16. The Genco will be responsible for decommissioning
28 after the Stations are transferred. The Genco will
29 decommission the Stations in accordance with the
30 Nuclear Regulatory Commission's decommissioning
31 regulations. These regulations include requirements
32 for assurance of adequate decommissioning funding that
33 will apply to the Genco.

34
35 Q.17. If this petition is granted, will the Genco be able to
36 collect additional amounts for decommissioning from
37 ComEd's customers?

38
39 A.17. No. The Genco will receive the assets in ComEd's
40 decommissioning trusts in connection with the transfer
41 of the Stations, together with six years of additional
42 decommissioning collections at the annual rate of
43 \$120.9333 million, and will assume the obligation to
44 decommission the Stations. The Genco will accept the

1 risk of a shortfall in the decommissioning trusts and,
2 in such an event, will use its own funds for
3 decommissioning. The Genco will have no right to
4 collect additional amounts from ComEd or from its
5 customers through decommissioning rates.
6

7
8 Q.18. Will the Genco perform non-radiological
9 decommissioning at the Stations?

10
11 A.18. The Genco will decommission the Stations in accordance
12 with all applicable legal requirements that will be in
13 place over the many years when decommissioning work is
14 performed, including environmental regulations that
15 apply to the Stations.
16

17
18 Q.19. Will the Genco be the recipient of any amounts that
19 may be recovered from the Department of Energy based
20 on its failure to remove spent fuel from the Stations?
21

22 A.19. Yes. ComEd has informed the Commission in its prior
23 decommissioning cases that it has sued the Department
24 of Energy (the "DOE") for, inter alia, breach of its
25 contractual obligation to remove spent nuclear fuel at
26 the Stations. ComEd is seeking to recover as damages
27 in this action the amounts it has spent storing spent
28 nuclear fuel at the Station sites. Under the
29 arrangements for the transfer of the Stations, any
30 recovery from the DOE will belong to the Genco.
31

32
33 Attachments A & B
34

35 Q.20. Please describe Attachments A and B to your testimony.
36

37 A.20. Attachments A and B provide detailed information on
38 the assumptions and other factors used to determine
39 the decommissioning cost-of-service. Attachment B
40 must be included in the Commission's order in this
41 proceeding to ensure maximum contribution to the tax
42 qualified trust funds in accordance with Internal
43 Revenue Service regulations.
44

Annual Filings

Q. 21. Under the Public Utilities Act, how often are decommissioning rates required to be reviewed?

A. 21. Section 9-201.5(d) of the Public Utilities Act provides that decommissioning rates authorized by the Commission and decommissioning cost studies underlying the rates shall be subject to hearing and review not less than once every six years.

Q. 22. How often is ComEd required to make decommissioning filings with the Commission under Rider 31?

A. 22. ComEd's decommissioning Rider 31 presently requires the company to make a decommissioning filing with the Commission on or before February 28 of each year.

Q. 23. Is ComEd proposing to make any filing during the six year funding period?

A. 23. Yes. During the six year funding period proposed in this docket, ComEd will make annual filings for information purposes. These filings will be limited to the reconciliation between actual and projected collections which may be necessary from actual kwh sales being different than projected. Each filing would adjust the annual jurisdictional cost of service of \$120.9333 million by the overcollection or undercollection from the previous period. In the seventh year, ComEd would make a final filing to reconcile the sixth year collections. The final tariff would be established at the reconciliation amount only and would be effective in the sixth month following the sixth year. The reconciliations are necessary to ensure that ComEd collects only \$120.9333 million annually.

Pending Rider 31 Cases

Q.24. Please discuss ComEd's decommissioning cases that are pending at the Commission.

A.24. ComEd has two decommissioning cases that are pending at the Commission. The record in ComEd's 1999 decommissioning case (Docket 99-0115) has been "heard and taken" and the case is currently under advisement by the Hearing Examiner. ComEd's 2000 decommissioning case (Docket 00-0191) was only recently filed on February 28, 2000. No hearings have occurred in that docket. In the event that this Petition is granted, and the merger and transfer of assets to the Genco take place, ComEd will withdraw its Petitions filed in both the 1999 and the 2000 decommissioning cases.

FASB Exposure Draft

Q.25. Are there any changes in the accounting standards related to the accounting for nuclear decommissioning costs?

A.25. Yes. On February 17, 2000 the Financial Accounting Standard Board (FASB) issued a revised exposure draft of a proposed statement of financial accounting standards entitled "Accounting for Obligations Associated with the Retirement of Long-Lived Assets." That standard, if adopted, would have a significant impact on the Company's accounting for nuclear decommissioning and the related trust funds. Such a standard would require that the present value of the expected future decommissioning cost be recorded as a liability and a depreciable asset. The nuclear decommissioning trust funds would not be allowed as an offset to the liability, but would be accounted for separately subject to the provisions of FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Services."

The FASB has proposed the new standard to be effective for companies reporting calendar year financial statements beginning in 2002. Thus, the financial

1 statements of the Genco would reflect the accounting
2 and financial disclosure required by the accounting
3 standard, if enacted, beginning in 2002.
4

5
6 Pre-1989 Contributions
7

8 Q.26. Please describe how ComEd's proposal treats
9 contributions made in accordance with the Commission's
10 order in Docket 88-0928.
11

12 A.26. In accordance with the Commission's order in Docket
13 88-0928, decommissioning costs collected prior to
14 September 12, 1988 ("pre-1989 collections") are
15 contributed to the decommissioning trusts in equal
16 annual installments over the remaining NRC operating
17 lives of each station. Dresden 1's contribution
18 period coincides with Dresden 3.
19

20 ComEd's proposal will accelerate this schedule by
21 contributing the remaining pre-89 collection balances
22 to the decommissioning trusts over the six-year period
23 after the Stations are transferred, thereby increasing
24 contributions for pre-1989 collections from \$5.9
25 million to \$10,960,770 per year.
26

27 Q.27. Does this conclude your testimony?
28

29 A.27. Yes.

CONTRIBUTION AGREEMENT

Dated as of _____, 2000

between

COMMONWEALTH EDISON COMPANY

and

_____ GENCO, INC.

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SCHEDULES

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EXHIBITS:

3.4(a)	Form of Power Purchase Agreement
3.4(b)	Form of Facilities, Interconnection and Easement Agreement
3.4(c)	Form of Facilities and Easement Agreement (Zion Station)

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT (this "*Agreement*") dated as of _____, 2000 between Commonwealth Edison Company, an Illinois corporation ("*Transferor*"), and _____ Genco, Inc., a [Pennsylvania] corporation ("*Transferee*").

W I T N E S S E T H:

WHEREAS, Transferor operates nuclear generating plants and related facilities for the generation of electricity, which it desires to contribute to Transferee; and

WHEREAS, Transferee desires to receive such assets and related liabilities from Transferor and to conduct an electricity generation business therewith;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and other good and valuable consideration had and received, the parties agree as follows:

ARTICLE I: DEFINITIONS

1.1 Defined Terms. In addition to the terms defined elsewhere in this Agreement (which terms shall have the respective meanings there so specified), the following capitalized terms shall have the respective meanings set forth below:

"*Affiliate*" shall mean any Person that directly, or indirectly through one or more Persons, controls, is controlled by, or is under common control with, the Person specified or, directly or indirectly, is related to or otherwise associated with any such Person or entity.

"*Collective Bargaining Agreement*" means, as specifically applicable to the relevant transferred assets, the express language contained in those portions of (a) the Collective Bargaining Agreement between Transferor and Local 15 of the IBEW (August 25, 1997 to March 31, 2001) (the "*CBA*"), (b) the separately bound 140-page Supplement to Collective Bargaining Agreement Memorandum and Letters (which contains twenty memorandums and letters), the Supplemental Agreements governing the provision of pension, 401(k) and welfare benefit plans (including medical, dental, vision, flexible spending account, disability and life insurance), (c) the agreements expressly referred to in the CBA and (d) any other agreements between Transferor and Local 15 of the IBEW.

"*Commercially Reasonable Efforts*" means efforts by a party to perform the particular obligation under this Agreement that do not require such party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for such party to satisfy such obligation under this Agreement.

"Consents" means (i) all consents, approvals or authorizations relating to the Assets, including contracts, permits and lease agreements (but excluding leases involving future payments of less than \$1,000,000 in the aggregate), which are required in connection with the transfer of the Assets described herein and the failure of which to be obtained would have a material and adverse effect on the ownership, use, operation or condition of the Assets, taken as a whole, and (ii) the items listed in Schedule 2.5(a) (Required Consents).

"Decommissioning Costs" shall mean "decommissioning costs" as defined in 220 ILCS 5/8-508.1(a)(2).

"Decommissioning Trusts" mean the trusts established under the Trust Agreement dated December 8, 1988, as amended (Tax Qualified Decommissioning Trust) between Transferor and The Northern Trust Company and the Trust Agreement dated December 8, 1988, as amended (Non-Tax Qualified Decommissioning Trust) between Transferor and The Northern Trust Company.

"Distribution Easement Area" shall mean the portion of the Transferred Land, if any, identified by the parties prior to the Closing as the "distribution easement area."

"Distribution Excluded Assets" means all fixtures, personal property and improvements located on the Distribution Easement Area that form a part of or are related to the operation of the transmission, distribution or communications systems of Transferor (excluding any transmission and distribution equipment and facilities located in the Distribution Easement Area and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets – Personal Property)), including overhead and underground communications and electrical transmission and distribution lines (whether consisting of one circuit or more than one circuit) and other overhead and underground transmission, distribution, communication and related facilities and structures, including towers, microwave towers (and related facilities and equipment), pole structures, poles (and any and all foundations therefor), wires, cables, conduits, cooling oil, gas and other cooling medium, pipes, ducts, pumps, controls, switches, relays, circuit breakers, monitoring devices, fiber optic cable and facilities, counterpoise, anchors, ground grid, cathodic protection equipment, manholes, transformers, pedestals, and necessary fixtures, conductors and appurtenances attached thereto.

"Employment Laws" means any applicable Requirements of Laws, permits, orders or published decisions of Governmental Authorities relating to: (i) any aspect of employment or (ii) employee benefits, including those matters governed by the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Civil Rights Act of 1964 (42 U.S.C. § 2000e, including Title VII thereunder, and as amended by the Civil Rights Act of 1991), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.), the Equal Employment Act of 1972 (42 U.S.C. § 2000e et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206), the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et

seq.), the Family and Medical Leave Act of 1993 (29 U.S.C. § 260 et seq.), the Immigration Reform and Control Act of 1986 (8 U.S.C. § 1324a et seq.), the Labor Management Relations Act (29 U.S.C. § 141 et seq.), the National Labor Relations Act (29 U.S.C. § 151 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Older Workers Benefit Protection Act (29 U.S.C. § 621 et seq.), the Pregnancy Discrimination Act (42 U.S.C. § 2000e(k)), the Privacy Act of 1974 (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. § 301 et seq.) and the Worker Adjustment and Retraining Notification Act (29 U.S.C. § 2101 et seq.), and all state counterpart statutes.

"Environmental Conditions" means the presence of Hazardous Substances on, over, under or about the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease, or in soil, sediment, surface water or groundwater at the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease, whether occurring before or after the Closing, and including any migration of such Hazardous Substances either before or after the Closing, including migration to a location off the Transferred Real Property or other real property subject to an Assigned Lease. Environmental Conditions include any Hazardous Substances present in, on, or incorporated into any drums, equipment or debris that are or were discarded or abandoned or buried at the Transferred Real Property or any portion thereof or other real property subject to an Assigned Lease prior to or after the Closing.

"Environmental Laws" means any applicable Requirements of Laws, permits, orders or published decisions of Governmental Authorities relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of Hazardous Substances, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters or (ii) the impact of the matters described in the preceding clause upon human health or the environment, including those matters governed by the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), and the Atomic Energy Act (42 U.S.C. § 2011 et seq.), and all state counterpart statutes.

"Facilities" means, collectively, the land described on Schedule 2.1(a) (Transferred Land), the Transferred Improvements and the tangible personal property described in Section 2.1(d) (Contribution of Assets-Personal Property).

"Governmental Authority" means any foreign, federal, state, local or other governmental authority or regulatory agency, commission, department, or other governmental subdivision, court, tribunal or body, but excluding Transferee and any subsequent owner of the Facilities (if otherwise a Governmental Authority under this definition).

"Grant Deeds" means quitclaim deeds transferring the Transferred Real Property from Transferor to Transferee in form and substance satisfactory to the parties.

"Hazardous Substances" means any chemical, material or substance that is listed or regulated under applicable Environmental Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant", or is otherwise listed or regulated, or for which liability or standards of care are imposed under applicable Environmental Laws, including, for purposes of this Agreement, coal combustion byproducts, petroleum products, asbestos, polychlorinated biphenyls and similar substances and materials.

"IBEW" means the International Brotherhood of Electrical Workers.

"ICC" means the Illinois Commerce Commission.

"Mortgage" means the Mortgage dated July 1, 1923, as amended and supplemented, between Transferor and the Trustees named therein.

"Permitted Encumbrances" means, collectively: (i) liens, charges, encumbrances and exceptions for taxes and other governmental charges and assessments (including special assessments) that are not yet due and payable; (ii) other liens, charges, encumbrances or title exceptions or imperfections with respect to any of the Assets; (iii) all leases, licenses and occupancy and/or use agreements affecting the Assets (or any portion thereof) (including those leases, licenses and occupancy and/or use agreements that constitute an Assigned Lease or an Assigned Contract) whether or not recorded against the Transferred Real Property; (iv) all matters and exceptions set forth in any title reports or commitments relating to the Transferred Real Property that have been prepared in connection with the transactions contemplated herein and which have been delivered by Transferor to Transferee prior to Closing; (v) liens, charges, encumbrances or title exceptions or imperfections with respect to the Assets created by or resulting from the acts or omissions of Transferee or any of its Affiliates, employees, officers, directors, agents, representatives, contractors, invitees or licensees; (vi) liens, charges, encumbrances and/or title exceptions or imperfections created by any of the documents to be executed in connection with the Closing or this Agreement (including any reservations, easements, restrictions, covenants and other matters set forth in the Grant Deeds) whether prior to, at or after the Closing; (vii) all matters shown on or referenced in the surveys described in Section 3.2(h) (Documents to be Delivered by Transferor); (viii) local, county, state and federal laws, ordinances or governmental regulations, including building and zoning laws, ordinances and regulations now or hereafter in effect relating to the Assets; and (ix) any and all service contracts and other agreements affecting the Assets as of the date hereof (including the Assigned Contracts and the Assigned Leases), and any and all service contracts and other agreements entered into after the date hereof, in each case, to the extent in effect as of the Closing. Notwithstanding the foregoing, for purposes of this Agreement, the lien of the Mortgage shall not be a Permitted Encumbrance.

"Off-Site Disposal Location" means any third party off-site disposal location utilized by Transferor in the normal course of business prior to the Closing for the

treatment, disposal, storage, discharge or recycling of Hazardous Substances or other materials generated by the Facilities (other than radioactive materials); but, for the avoidance of doubt, shall not include any disposal site located on or beneath the Transferred Real Property or on or beneath other real property subject to an Assigned Lease.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

"Remediation" means any or all of the following activities to the extent they relate to or arise from the presence of an Environmental Condition and are required to be addressed either as a requirement of Environmental Laws or as a result of a claim or demand of a third party or Governmental Authority: (i) monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work required by Environmental Laws, (ii) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such work, (iii) preparing and implementing any plans or studies for such work, (iv) where required or desired, obtaining a written notice from a Governmental Authority with jurisdiction over the Assets or any portion thereof under Environmental Laws that no material additional work is required by such Governmental Authority and (v) any other activities reasonably necessary or appropriate or required under Environmental Laws to address or mitigate such Environmental Condition.

"Requirements of Laws" means any foreign, federal, state, county or local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any Governmental Authority.

"Stations" means the generating facilities known as Braidwood Station, Byron Station, Dresden Station, LaSalle County Station, Quad Cities Station and Zion Station.

"Switchyard" shall mean the land comprising a portion of the Transferred Land and commonly known as the "switchyard," as identified by the parties prior to the Closing.

"Switchyard Property" shall mean all fixtures, personal property and improvements located on the Switchyard (excluding any personal property on the Switchyard and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets—Personal Property)), including communications, transmission and distribution lines (whether consisting of one circuit or more than one circuit), communication facilities and structures, and facilities and equipment of every kind and nature whatsoever, including all transmission and distribution system facilities and equipment, including poles, conductors, fiber optic communication cables, manholes, circuit breakers, transformers, bus structures, buswork, foundations, duct packages, surface trough, conduit cathodic protection equipment, manual disconnects, motor operated disconnects, circuit switchers, potential transformer devices, current transformers, ground

grid, spare equipment, lightning arrestors, pipe-cable oil systems, coolers, structures, buildings, and all equipment therein.

"Tax" or "Taxes" means all net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property or windfall profits, taxes, customs duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority (domestic or foreign).

"Transaction Documents" has the meaning specified in Section 4.1(a) (Representations and Warranties of Transferor—Organization and Standing; Power and Authority).

"Transmission Easement Area" shall mean the portion of the Transferred Land identified by the parties prior to the Closing as the "transmission easement area."

"Transmission Excluded Assets" shall mean all fixtures, personal property and improvements located on the Transmission Easement Area that form a part of or are related to the operation of the transmission, distribution or communications systems of Transferor (excluding any transmission and distribution equipment and facilities located in the Transmission Easement Area and identified by the parties pursuant to Section 2.1(d) (Contribution of Assets – Personal Property)), including all overhead and underground electrical and communications transmission and distribution lines (whether consisting of one circuit or more than one circuit) and other overhead and underground transmission, distribution, communication and related facilities and structures, including towers, microwave towers (and related facilities and equipment), pole structures, poles (and any and all foundations therefor), wires, cables, conduits, cooling oil, gas and other cooling medium, pipes, ducts, pumps, controls, switches, relays, circuit breakers, monitoring devices, fiber optic cable and facilities, counterpoise, anchors, underground ground grid, cathodic protection equipment, manholes, transformers, pedestals, and necessary fixtures, conductors and appurtenances attached thereto.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears: (a) the singular includes the plural and vice versa; (b) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, to the extent applicable, the terms hereof; (c) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition; (d) "hereunder," "hereof," "hereto," "herein" and words of similar import are references to this Agreement as a whole and not to any particular Section or other provision hereof; (e) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (f) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or

reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

1.3 Captions. The captions of the various Articles, Sections, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

ARTICLE II: CONTRIBUTION OF ASSETS

2.1 Contribution of Assets. Subject to the Permitted Encumbrances and the terms and conditions of this Agreement, including Section 2.2 (Excluded Assets) and reservations, if any, in the Grant Deeds, Transferor shall contribute, convey, assign, transfer and deliver to Transferee and Transferee shall receive and assume from Transferor, all of Transferor's right, title and interest, if any, in and to the following assets (collectively, "*Assets*") on the Closing Date:

(a) Real Property Rights. Each parcel of real property described or depicted in Schedule 2.1(a) (Transferred Land) (the "*Transferred Land*").

(b) Improvements, Buildings, Structures and Fixtures. The improvements, buildings, structures and fixtures that are located on the Transferred Land or any portion thereof (collectively, the "*Transferred Improvements*" and, together with the Transferred Land, the "*Transferred Real Property*").

(c) Permits, Licenses, Etc. The governmental authorizations, consents, approvals, permits, licenses, orders, exceptions, exemptions or allowances, including applications for any of the foregoing, described in Schedule 2.1(c) (Specific Permits, Licenses and Variances), to the extent transferable.

(d) Personal Property. All machinery, equipment, facilities, vehicles, tools, furniture and other tangible personal property of Transferor that are identified by the parties prior to Closing, and which shall include, in any event, all spent nuclear fuel (wherever located) and all inventories of fuel and spare parts to the extent such are located on the Transferred Real Property or have ordinarily been allocated to the operation or maintenance of the Transferred Real Property and including any such property located on the Switchyard as identified by the parties prior to Closing.

(e) Power Purchase Agreements. The power purchase agreements listed on Schedule 2.1(e) (Assigned PPAs) (collectively, the "*Assigned PPAs*").

(f) Other Assets (1) The leases and licenses of personal property or real property listed on Schedule 2.1(f)(1) (Assigned Leases and Licenses) (collectively, "*Assigned Leases*"; (2) the fuel supply contracts and agreements listed on Schedule 2.1(f)(2) (Assigned Fuel Contracts) (collectively, "*Assigned Fuel Contracts*"; (3) the other contracts, agreements and purchase orders listed

on Schedule 2.1(f)(3) (collectively, "*Assigned Other Contracts*"); and (4) the causes of action of Transferor listed on Schedule 2.1(f)(4) (*Causes of Action*) (collectively, "*Causes of Action*").

(g) SO₂ Trading Allowances. Future SO₂ trading allowances to the extent owned by Transferor as of the date hereof and transferable.

(h) Insurance. All rights, claims and benefits of Transferor in, to or under all insurance policies listed on Schedule 2.1(h) (*Nuclear Insurance*), including any predecessor policies as to which a claim is pending as of the Closing Date and any successor or replacement policies as a result of the renewal or replacement of the coverage provided by said policies.

(i) NEIL Membership Interest. Transferor's membership in Nuclear Electric Insurance Limited, a Bermuda company ("*NEIL*"), including any rights to receive the accumulated surplus of NEIL in respect of such membership interest and any distributions in respect of such membership interest;

(j) Decommissioning Trust Assets. (1) All assets (including investments) held in the Decommissioning Trusts and (2) all funds collected, or to be collected, from ratepayers in respect of Decommissioning Costs as provided in Section 6.6 (*Decommissioning Costs*).

(k) Concomber Ltd. All capital stock of Concomber Ltd owned by Transferor.

(l) Records. The books, records, documents, drawings, reports, operating data and similar items of Transferor relating directly and specifically to the aforementioned assets.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein (except as may be provided in Section 3.2(k) (*Documents to be Delivered by Transferor*)), nothing in this Agreement will constitute or be construed as conferring on Transferee, and Transferee is not receiving, any right, title or interest in or to the following assets, all of the following assets being specifically excluded from the contribution and transfer of assets contemplated by this Agreement (collectively, the "*Excluded Assets*");

(a) Switchyard Property. All Switchyard Property;

(b) Transmission Assets. All Transmission Excluded Assets;

(c) Distribution Assets. All Distribution Excluded Assets;

(d) Other Excluded Assets. The assets (including contracts) listed or described on Schedule 2.2(d) (*Other Excluded Assets*);

(e) Trademarks and Trade Names. The names "Commonwealth Edison Company" or "ComEd";

(f) Employee Benefit Assets. Any assets of the ComEd Pension Plan, the Commonwealth Edison Employees' Benefit Trust, the Commonwealth Edison Employees' Benefit Trust for Management Employees or the Commonwealth Edison Employees' Benefit Trust for Union Employees;

(g) Causes of Action. Except as provided in Section 2.1(f)(4) (Contribution of Assets—Other Assets) and Section 2.1(h) (Contribution of Assets—Insurance), any causes of action against a third Person relating to the period prior to the Closing Date; and

(h) Other Exclusions. Any properties, assets, business, operation, subsidiary or division of Transferor or any Affiliate of Transferor, whether tangible or intangible, real, personal or mixed, not set forth in Section 2.1 (Contribution of Assets), including any cash or working capital of Transferor, and all accounting or general ledger records of Transferor.

In no event shall any Excluded Assets be included within, or constitute, Assets for the purposes of this Agreement.

2.3 Transferee's Liabilities. On the Closing Date, Transferee shall assume and be responsible and liable for (i) all obligations and liabilities related to, arising from or associated with ownership, occupancy, use or operation of the Assets from and after the Closing (other than Excluded Liabilities) and (ii) the following obligations and liabilities (collectively, "*Transferee's Liabilities*"):

(a) Environmental Liabilities. Subject to and except for Transferor's obligations pursuant to Section 2.4(d) (Excluded Liabilities): (i) responsibility for compliance and liability for any non-compliance by the Assets with Environmental Laws (including fines, penalties and costs to correct); (ii) all Environmental Conditions and Remediation thereof; (iii) responsibility and liability for all Hazardous Substances, and Remediation thereof, present in, on or incorporated into the improvements, buildings, structures, fixtures or equipment which constitute the Assets or which are otherwise located on or have migrated from the Transferred Real Property, including responsibility and liability for: (1) bodily injury to any Person or damages to any property or natural resources to the extent arising from exposure to or release of such Hazardous Substances and Remediation thereof and (2) any Hazardous Substances present in, on, under or about, or incorporated into any drums, equipment or debris that were discarded or abandoned and buried in the ground at the Transferred Real Property or any portion thereof; (iv) liability arising from the ownership, possession, use or operation of equipment, fixtures, structures, surface impoundments or any other improvement at the Transferred Real Property, or at owned or leased adjacent properties, used for the treatment, storage, handling or disposal of Hazardous

Substances; and (v) any obligation to decommission, deactivate, dismantle, demolish or close the Facilities or any portion thereof, or any surface impoundments or other waste or effluent handling or storage units on owned or leased adjacent properties used in connection with the operation of the Facilities and, in the case of any of subsections (i) through (v) above, whether occurring, existing or arising on, before or after the Closing (collectively, "*Environmental Liabilities*").

(b) Disposal of Radioactive Materials. Responsibility for compliance, and liability for non-compliance, with all Requirements of Laws relating to the use, handling and disposal of radioactive materials, including obligations under the Nuclear Waste Policy Act of 1982 and Transferor's obligations under the Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste with the United States Department of Energy (including its obligation to pay a one-time fee plus interest to the date of payment for nuclear generation through April 6, 1983).

(c) Decommissioning. Responsibility for decommissioning the Stations in compliance with all Requirements of Laws, including responsibility for establishing, maintaining and funding (except to the extent, and only to the extent, otherwise provided in Section 6.6 (Decommissioning Costs)) such financial assurance mechanisms as shall be required to provide for such decommissioning under such Requirements of Laws.

(d) Compliance Liabilities. Obligations to comply with, and all liabilities connected with or arising out of, the permits, licenses, exemptions, allowances, approvals and other items (including applications) listed in Schedule 2.1(c) (Specific Permits, Licenses and Variances) and other permits, licenses, exemptions, allowances and approvals obtained or required in connection with the Assets, including the obligations and liabilities arising from or related to emission and discharge allowances, any zoning, land use, building, construction, demolition, setback and subdivision permits, licenses, approvals and authorizations, and the obligation to cure any violation or default under any of the foregoing and pay any resultant penalties, irrespective of whether such violation or default arose or occurred prior to the Closing Date.

(e) Permit Renewals. Obligations and liabilities under any amendments, modifications, extensions or renewals of any existing permits, variances, certificates, licenses, consents, authorizations and approvals relating to the Assets.

(f) Assigned Liabilities. Obligations and liabilities under the Assigned PPAs, the Assigned Leases and the Assigned Contracts relating to the period from and after the Closing Date.

(g) Employment-Related Obligations. All employment-related obligations and liabilities (including obligations and liabilities for workers compensation claims and under Employment Laws) to employees of Transferor that in connection with the transaction contemplated herein are subsequently employed by Transferee or one of its Affiliates (other than Transferor) arising or relating to the period from and after the Closing Date.

(h) Other Specified Liabilities. All other obligations and liabilities allocated to Transferee in this Agreement.

2.4 Excluded Liabilities. Transferee shall not assume or be obligated to pay, perform or otherwise discharge the following excluded obligations and liabilities (collectively, the "***Excluded Liabilities***"):

(a) Obligations and liabilities of Transferor in respect of any Excluded Assets or other assets of Transferor which are not Assets (other than obligations or liabilities relating to Environmental Liabilities, the use, handling or disposal of radioactive materials, or described in any subsection below);

(b) Obligations and liabilities of Transferor under any of the Assigned PPAs, Assigned Leases or Assigned Contracts relating to the period prior to the Closing Date (other than obligations or liabilities relating to (i) Environmental Liabilities or the use, handling or disposal of radioactive materials and (ii) any unused minimum take or pay obligation under any such Assigned PPA, Assigned Lease, Assigned Fuel Contract or Assigned Other Contract);

(c) Obligations and liabilities for personal injury or property loss or damages (but only to the extent the alleged personal injury or property loss or damage occurred before the Closing Date) resulting from or arising out of the ownership or operation of the Assets by Transferor prior to the Closing Date (other than obligations or liabilities relating to Environmental Liabilities, the use, handling or disposal of radioactive materials, exposure to nuclear hazards, or described in subsection (d) below);

(d) Obligations and liabilities resulting from or arising out of any arrangement by Transferor for the treatment or disposal of any Hazardous Substance generated by the operation of the Facilities at any Off-Site Disposal Location, to the extent such treatment or disposal occurred prior to the Closing Date; provided that, for any obligation or liability related to an Off-Site Disposal Location that was used by Transferor prior to Closing and by Transferee on and after the Closing, this Excluded Liability shall include only that portion of any resulting liability that is attributable to Transferor's pre-Closing use of such Off-Site Disposal Location;

(e) Any fines or penalties imposed by a Governmental Authority to the extent resulting from acts or omissions of Transferor prior to the Closing Date